

***Superseded 5/10/2016***

**78B-6-1304 Motions related to a notice of the pendency of an action.**

- (1) Any time after a notice has been recorded pursuant to Section 78B-6-1303, any of the following may make a motion to the court in which the action is pending to release the notice:
  - (a) a party to the action; or
  - (b) a person with an interest in the real property affected by the notice.
- (2) A court shall order a notice released if:
  - (a) the court receives a motion to release under Subsection (1); and
  - (b) the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim that is the subject of the notice.
- (3) If a court releases a notice pursuant to this section, the claimant may not record another notice with respect to the same property without approval of the court in which the action is pending.
- (4) Upon a motion by any person with an interest in the real property that is the subject of a notice, a court may require the claimant to give the moving party a guarantee as a condition of maintaining the notice:
  - (a) any time after a notice has been recorded; and
  - (b) regardless of whether the court has received an application to release under Subsection (1).
- (5) A person who receives a guarantee under Subsection (4) may recover an amount not to exceed the amount of the guarantee upon a showing that:
  - (a) the claimant did not prevail on the real property claim; and
  - (b) the person seeking the guarantee suffered damages as a result of the maintenance of the notice.
- (6) A court shall award costs and attorney fees to a prevailing party on any motion under this section unless the court finds that:
  - (a) the nonprevailing party acted with substantial justification; or
  - (b) other circumstances make the imposition of attorney fees and costs unjust.